No. 87-2086 (4)

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1988

DAVID A. BOONE, *et al.*,
Petitioners,

VS.

REDEVELOPMENT AGENCY OF THE
CITY OF SAN JOSE, *et al.*,
Respondents.

**On Petition for Writ of Certiorari
To the United States Court of Appeals
for the Ninth Circuit**

MUNICIPAL RESPONDENTS' BRIEF IN OPPOSITION

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RESTATEMENT OF QUESTIONS PRESENTED

1. Respondents Redevelopment Agency of the City of San Jose and City of San Jose address herein the first issue raised in the Petition for Writ of Certiorari—Can a disappointed commercial developer base a federal antitrust case against a municipality on a claim that the municipality committed procedural errors in the exercise of its authority under state law, where the municipality was acting pursuant to a clearly articulated and affirmatively expressed state policy to replace competition?

2. Respondent Koll Company addresses the second issue raised in the Petition for Writ of Certiorari in its Brief in Opposition to Petition for Writ of Certiorari—Can one competitor base an antitrust case against another competitor solely by alleging a conspiracy with a municipal official, where the activities complained of consist of legitimate lobbying activities on the part of the private competitor, designed to influence municipal action?

CORRECTED LIST OF PARTIES

In their list of parties, petitioners identified Frank Taylor, Executive Director of the Redevelopment Agency of the City of San Jose, as a respondent to this writ petition and a party to the underlying action. This is incorrect. Although petitioners named Mr. Taylor as a defendant in their Second Amended Complaint, he was never served with a summons and complaint and he has not appeared in this action for any purpose, including the filing of municipal respondents' successful motion to dismiss that forms the basis of the pending writ petition.

Donald Goglio, one of the petitioners herein, is incorrectly identified by petitioners as "Arnold" Goglio.

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MUNICIPAL RESPONDENTS' BRIEF IN OPPOSITION

For the reasons set forth below, Respondents Redevelopment Agency of the City of San Jose ("Agency") and the City of San Jose ("City") respectfully request that this Court deny the petition for writ of certiorari, seeking review of the Ninth Circuit Court of Appeals' opinion in this case. That opinion is reported at 841 F.2d 886.

STATUTES INVOLVED

Petitioners' statement of relevant statutes is incomplete. Evaluation of the applicability of the State Action exemption to the federal antitrust laws requires a review of the entire relevant state statutory scheme, in this case the entire California Community Redevelopment Act, Health & Safety Code sections 33000-33855. The particular state statutes expressly relied upon by the Ninth Circuit Court of Appeals in the opinion below to find that

the State Action exemption applied in this case included Health & Safety Code §§ 33035(a), 33037(a), 33131(a), 33220(d), 33341, 33342 and 33450. 841 F.2d at 890. The district court also relied upon Health & Safety Code sections 33125(c) and 33396. (Pets.' App. B, A-24). Municipal respondents believe that the following additional specific statutes also are relevant: Health & Safety Code §§ 33367, 33368, 33450-33458, 33500 and 33501. The particular statutes cited above are included in municipal respondents' appendix, pp. A-1 through A-13.

STATEMENT OF THE CASE

The Court of Appeals succinctly stated the facts involved in this case in Part I of its opinion. 841 F.2d at 889. In brief, this case involves a decision by the Agency and City not to construct a multi-story parking garage at a certain location in downtown San Jose but, rather, at another location, two blocks away.

The events giving rise to this case began in 1975 when the Agency adopted its 20-year redevelopment plan for the downtown Pueblo Uno Redevelopment Area (the "Plan"). (Petitioners' SAC paras. 12, A-40).[1] At that time the City made the finding that the Pueblo Uno area was "blighted," as required by state law, Cal. Health & Safety Code section 33367. (Pets.' App. V, B-13). The Agency then took necessary intermediary acts to implement the redevelopment plan. It approved a master plan designating land uses, budgeted funds, and negotiated and entered agreements with private developers, including petitioners here, for construction of discreet development projects conforming with the Plan. (*E.g.*, SAC paras. 18-20, 22-23).

During 1982-1983 the Agency concluded that the public interest and the goal of redevelopment would be served best by constructing automobile parking structures at the periphery, not the center, of the Pueblo Uno Redevelopment Area (the

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[1] The only pertinent pleading below, petitioners' Second Amended Complaint, will be referred to hereafter as "SAC". Petitioners have provided the Court with a copy of the SAC at their Appendix C, beginning at A-33.

"Area"). The City-owned parking previously located across the street from petitioners' office tower was therefore moved to a different site, two blocks away.

This change to the redevelopment program was accomplished by an amendment to the original Plan, condemnation of some contiguous privately-held property, and subsequent sale to the selected private developer (respondent Koll Company). Accordingly, following a public disclosure and comment period beginning in October, 1982 (SAC para. 36), the Agency amended the plan in December, 1983, to redesignate land use and authorize the use of condemnation (the "Amended Plan"). (*Id.*, paras. 47-51).

Petitioners did not challenge the propriety of the amendment, as provided by the state regulatory scheme, Health & Safety Code sections 33500-501. Following eminent domain proceedings acquired land was conveyed to, and developed as provided for in the Amended Plan, by Koll. (SAC paras. 51, 56).

Petitioners alleged that they constructed an office building in downtown San Jose with the understanding that the City would provide them with parking in the proposed downtown parking garage, and as a result petitioners did not construct adequate on-site parking. 841 F.2d at 889; Pets.' App. A-5. Petitioners also alleged that in return for not protesting the amendment to the plan, unnamed city officials promised to reserve a section of the relocated municipal parking structure for petitioners' exclusive use. *Id.* These are the alleged anticompetitive acts of which petitioners complain.

The district court and court of appeals found that the alleged anticompetitive acts of respondents City and Agency were clearly authorized and contemplated by the state authorizing statute. 841 F.2d at 890-91; Pets.' App. B, at A-24-26. Therefore, the courts found that the acts were not subject to attack in the federal courts under the Sherman Antitrust Act. *Town of Hallie v. City of Eau Claire*, 471 U.S. 34, 105 S.Ct. 1713, 85 L.Ed.2d 25 (1985); *Parker v. Brown*, 317 U.S. 341, 63 S.Ct. 1079, 87 L.Ed. 315 (1943).

REASONS WHY THIS PETITION FOR WRIT OF CERTORARI SHOULD BE DENIED

The Ninth Circuit Court of Appeals, in its opinion below, was completely faithful to both the rationale and guidelines established by this Court for evaluating applicability of the State Action immunity. Recent decisions of this Court set forth in detail the objective, limited analysis to be applied by the federal courts in determining whether the State Action immunity applies. Thus, no general benefit will be provided by examining the narrow, fact-specific questions posed by petitioners. Nor does the decision below in any way conflict with the decision of any other federal court of appeals. To the contrary, all other courts of appeals that have explored similar issues have reached the identical conclusion.

Further, petitioners have no chance of ultimate success on the merits. Their underlying complaint discloses that they have no antitrust injury and therefore lack standing. Additionally, the very theory on which they proceed—the contention that continued redevelopment was improper because urban "blight" had been eliminated through "private enterprise action alone"—is wholly antithetical to the alleged promise of city-provided parking they seek to enforce by their underlying action.

ARGUMENT

I

THE OPINION BELOW IS IN ACCORD WITH THE APPLICABLE DECISIONS OF THIS COURT AND THE OTHER FEDERAL COURTS OF APPEALS

A. The State Action Doctrine Exempts From The Sherman Act The Municipal Respondents' Conduct Pursuant To The Urban Redevelopment Laws Of The State Of California

This Court, in *Parker v. Brown*, 317 U.S. 341, 63 S.Ct. 307, 87 L.Ed. 315 (1943), considered whether the Sherman Antitrust Act, 15 U.S.C. § 1, *et seq.*, prohibited the anticompetitive actions of a state or its agents taken in accordance with state law. Relying on principles of federalism and state sovereignty embodied in the

federal constitution, the Court refused to find in the Sherman Act "an unexpressed purpose to nullify a state's control over its officers and agents." *Id.* at 351 63 S.Ct. at 313. The concerns of federalism and preservation of the states' sovereignty have been repeatedly affirmed by the Court during the subsequent four decades. *See, e.g., Patrick v. Burget,* ____U.S.____, 108 S.Ct. 1658 (1988); *Town of Hallie v. City of Eau Claire*, 471 U.S. 34, 105 S.Ct. 1713, 85 L.Ed.2d 25 (1985), *Southern Motor Carriers Rate Conference v. United States,* 471 U.S. 48, 105 S.Ct. 1721, 85 L.Ed.2d 36 (1985); *Hoover v. Ronwin,* 466 U.S. 558, 104 S.Ct. 1989, 80 L.Ed.2d 590 (1984). When it rendered the decision below, the Ninth Circuit Court of Appeals faithfully applied the standards of review set out by this Court, and protected the federalism and state sovereignty concerns first expressed in *Parker.*[2]

This Court's recent State Action decisions have strictly limited the federal court's review of challenged conduct of a state or municipality taken pursuant to authorizing state legislation. The antitrust laws do not apply to municipal action if an objective analysis of the state's authorizing legislation "evidences a 'clearly articulated and affirmatively expressed' state policy to displace competition with regulation" in the particular area of municipal conduct. *Hallie v. Eau Claire, supra,* 471 U.S. at 44, 105 S.Ct. at 1719.

The Ninth Circuit Court of Appeals faithfully applied the analytical framework and policy guidelines provided by *Hallie* in reaching the decision below. The court of appeals, like the district court whose ruling it affirmed, examined municipal respondents'

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[2] Although the court of appeals analyzed petitioners' allegations against Koll under the Noerr-Pennington doctrine, it is clear that petitioners cannot escape application of the State Action doctrine by merely suing Koll, the private party who cooperated with the City and Agency in furtherance of the redevelopment program. *United States v. Southern Motor Carriers Rate Conference,* 471 U.S. 56, 105 S.Ct. 1721 (1985); *Cine 42nd Street Theatre Corp. v. Nederlander Org., Inc.,* 790 F.2d 1032, 1048 (2d Cir. 1986); *L & HS Sanitation, Inc. v. Lake City Sanitation, Inc.,* 769 F.2d 517, 522 (8th Cir. 1985); see also *Mercy Peninsula Ambulance Co. v. San Mateo Co.,* 791 F.2d 755, 759 (9th Cir. 1986).

alleged actions against the broad redevelopment authority granted by the state Community Redevelopment Act, Cal. Health & Safety Code §§ 33000-33855. 841 F.2d at 889-891. The court of appeals found that California law provides local governments broad powers to engage in acts which are clearly anticompetitive to combat the "serious and growing menace" created by blighted areas (Health & S.C. § 33035(a)), and had affirmatively expressed the goal of eliminating blight "through the employment of all appropriate means" (*id.*, § 33037(a)). 841 F.2d at 890.

As the court of appeals properly concluded, this comprehensive statute clearly expresses "a legislative intent to displace the free market with state regulation." 841 F.2d at 891.[3] In fact, as the court below correctly recognized, the anticompetitive acts specifically authorized and contemplated by the California redevelopment law—amendment of the redevelopment plan to redesignate authorized uses, condemnation of land within the redevelopment area and its sale to a competing commercial developer for improvement—are precisely the types of activities that the petitioners' complaint challenges. *Id.* at 890.

The holding and analysis of the Ninth Circuit conforms with all other federal courts of appeals that have considered whether state-authorized municipal land use planning, zoning and related redevelopment activities are exempt from antitrust scrutiny. In fact, all of the lower federal courts that have considered this particular type of municipal regulation have held that similar state redevelopment or zoning statutes express an intent by the legislature to authorize clearly anticompetitive results, including municipalities' agreements to subsidize private renewal projects by supplying developers a protected economic position. *See, e.g., Cine 42nd Street Theatre Corp. v. Nederlander Org., Inc.*, 790 F.2d 1032 (2d Cir. 1986); *Racetrac Petroleum, Inc. v. Prince George's County*, 786 F.2d 202 (4th Cir. 1986), *aff'g* 601 F.Supp. 892 (D.Md. 1985); *LaSalle National Bank v. County of DuPage*, 777 F.2d 377 (7th Cir. 1985), *cert. denied*, ____ U.S. ____, 106

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[3] Petitioners themselves admit the state law grants "essentially limitless" authority for the City and Agency "to do *anything* to redevelop blighted areas" (Pet. at 2, emphasis in original).

S.Ct. 2892, 90 L.Ed. 2d 979 (1986); *Scott v. Sioux City,* 736 F.2d 1207 (8th Cir. 1984), *cert. denied,* 471 U.S. 1003, 105 S.Ct. 1864, 85 L.Ed.2d 158 (1985); *Russell v. Kansas City,* 690 F.Supp. 947, 953-54 (D.Kan. 1988); *Vartan v. Harristown Dev. Corp.,* 655 F.Supp. 430 (M.D.Pa. 1987), *aff'd,* 838 F.2d 1206, 1208 (3d Cir. 1988); *Price v. Fort Pierce,* 625 F.Supp. 979, 981 (S.D. Fla. 1986); *Reasor v. Norfolk,* 606 F.Supp. 788, 793-796 (E.D.Va. 1984).

B. This Case Merely Presents Allegations Of Procedural Errors Under State Law, Which Are Not Subject To Review Under The Sherman Act

Petitioners have distorted the record below in an attempt to present the Court with a question worthy of its attention. But no such broad question exists. Petitioners invite the Court to reconsider the question whether a municipality's anticompetitive activities fall within the State Action exemption to the federal antitrust laws "when those activities are *expressly prohibited* by the state, which affirmatively does not authorize the displacement of competition and instead seeks action by unfettered competition." (Pets.' "Question Presented"). However, the real question before the court of appeals, and therefore before this Court, is a much narrower, parochial one, namely the interpretation of the particular California urban redevelopment statutes to determine whether the allegedly anticompetitive municipal activity in fact was contemplated by the statute. That question was answered correctly by the Ninth Circuit in the decision below.

The circuit court explicitly applied a two-part inquiry in determining whether State Action immunity applied to the facts alleged by petitioners:

> We must first determine *whether the California legislature authorized the challenged actions* of the city and the agency. Then we must determine whether the legislature intended to displace competition with regulation. Both elements are prerequisites to proper application of the state action exception to municipal action.

841 F.2d at 890 (emphasis added). The court then examined the statute against the alleged municipal activity and properly con-

cluded that the acts challenged by petitioner "are *clearly and affirmatively authorized* by the California legislature." *Id.* (emphasis added). In other words, petitioners have purposefully ignored the express determination of the court of appeals in order to deceptively create the *appearance* of both (1) abuse by the lower court and (2) a question of broad social and judicial interest.

This Court has clearly delineated the level of antitrust scrutiny that federal courts may constitutionally apply to municipal action. That scrutiny is limited to an objective determination whether the state authorizing statutes relied on "evidence a 'clearly articulated and affirmatively expressed' state policy to displace competition with regulation" in a particular area, showing that " 'the legislature contemplated the kind of action complained of.' " *Hallie, supra*, 471 U.S. at 44, 105 S.Ct. at 1719 (quoting *City of Lafayette v. Louisiana Power & Light Co.*, 435 U.S. 389, 415, 98 S.Ct. 1123, 1138, 556 L.Ed.2d 364 (1978)).

The contended procedural irregularities and other state law violations on which petitioners rely are matters best reviewed by the California state courts, which have both the jurisdiction to review administrative errors by municipal agencies and are well-suited to interpret the state's statutory schemes. As the Ninth Circuit recognized in the opinion below, decisions made by municipalities acting under the California redevelopment law are reviewable in state court. 841 F.2d at 886. *See, Berggren v. Moore*, 61 Cal.2d 347, 38 Cal.Rptr. 722, 392 P.2d 522 (1964); *Kehoe v. City of Berkeley*, 67 Cal.App.3d 666, 135 Cal.Rptr. 700 (1977); *Babcock v. Community Redev. Agency*, 148 Cal.App.2d 38, 306 P.2d 513 (1957); *see also, Johnson v. Redevelopment Agency of City of Oakland*, 317 F.2d 872 (9th Cir.), *cert. denied*, 375 U.S. 915, 84 S.Ct. 216, 11 L.Ed.2d 154 (1963); *Emmington v. Solano County Redevelopment Agency*, 195 Cal.App.3d 491, 237 Cal.Rptr. 636 (1987). Health and Safety Code Section 33501 expressly provides that the state superior courts may be petitioned to determine the "validity of a redevelopment plan," including "the legality and validity of all proceedings theretofore taken" as well as the redevelopment agency's "authority to transact business and exercise its powers." Thus, petitioners clearly had recourse to

the state courts to bring any argument that the Agency had improperly amended the plan in December 1983 or had lost its authority to act because blight had been eliminated.[4]

Given the adequate remedies available in the state courts, it would be especially unwise and improper for the federal courts to become embroiled in detailed fact finding or interpretation of state regulatory statutes as a prelude to application of the federal antitrust laws. *Parker* and its progeny clearly require that the federal courts leave complaints of administrative "abuse" or procedural error to the state courts once they have answered affirmatively the initial objective question whether the "anticompetitive effects [complained of] logically would result from [the] broad authority to regulate." *Hallie, supra,* at 42, 105 S.Ct. at 1718. Otherwise, requiring "such a close examination of a state legislature's intent . . . would be undesirable . . . because it would embroil the federal courts in the *unnecessary interpretation of state statutes." Id.* at 44 n.7, 105 S.Ct. at 1719 (emphasis added).

All of the circuit courts that have addressed the issue also have recognized that the principles enunciated in *Parker* require the courts to abstain from making more than a limited objective inquiry into whether the anticompetitive results complained of were anticipated and authorized by the legislature. *Interface Group, Inc. v. Massachusetts Port Authority,* 816 F.2d 9, 13-14 (1st Cir. 1987); *Hancock Industries v. Schaeffer,* 811 F.2d 225, 234-236 (3d Cir. 1987); *Llewellyn v. Crothers,* 765 F.2d 769, 774 (9th Cir. 1985); *Euster v. Eagle Downs Racing Association,* 677 F.2d 992 (3d Cir.), *cert. denied,* 459 U.S. 1022, 103 S.Ct. 388, 74

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[4] Petitioners complain in their Supplemental Brief and elsewhere that the state trial court, too, has been persuaded that they cannot state a claim for declaratory relief, equitable estoppel (to enforce the alleged "assurances" of parking) or inverse condemnation. (Supp. Pet. at 8; Pets.' App. III, p. B-8-10). Of course, the fact that the state court found their *fourth* amended complaint *in that court* deficient on a *multitude* of grounds (*id.* at p. B-9, B-10, sustaining demurrer for *each* of the reasons listed), does not negate the availability of state court review for deserving plaintiffs with legitimate complaints. Rather, petitioners' failure in *both* the federal and state courts confirms the general meritlessness of their case.

L.Ed.2d 519 (1982). Most recently, in *Lease Lights, Inc. v. Public Service Elec. & Gas. Co.*, 849 F.2d 1330, 1334 (10th Cir. 1988), the Tenth Circuit recognized that even the "constitutional invalidity of the attempted state regulations is not an appropriate basis for disregarding state action immunity." *See also, Scott v. Sioux City, supra,* 736 F.2d at 1215-16, *cert. denied,* 469 U.S. 1003, 105 S.Ct. 1864; *Vartan v. Harristown Dev. Corp., supra,* 655 F.Supp. at 435-437 (M.D.Pa. 1987), *aff'd,* 838 F.2d 1206, 1208 (3d Cir. 1988); *City Communication, Inc. v. City of Detroit,* 660 F.Supp. 932, 935 n.3 (E.D.Mich. 1987).[5]

II

THE DECISION BELOW IS CORRECT ON GROUNDS OTHER THAN THE STATE ACTION DOCTRINE

Aside from the issue of the applicability of the State Action exemption under the facts alleged, petitioners are without hope of succeeding on their antitrust theories at trial. Ignoring for the present the fact that petitioners would be unable to prove any of

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[5] As discussed above, under *Hallie*, the federal courts should refrain from detailed review of states' procedural requirements. However, municipal respondents in fact complied with all procedural requirements in amending the Plan in December 1983. The California Community Redevelopment Act required the Agency to make eight specific findings of fact, including a finding of blight, when it *initially adopted* the Plan in 1975. Cal. Health & S.C. § 33367(d)(1)-(8). A separate provision of the Act, sections 33450-33458, authorizes and governs the procedures for the *amendment* of redevelopment plans. Section 33457.1 requires only limited findings in conjunction with plan amendments. The statute provides that the findings required by section 33367(d) need be made only "[t]o the extent warranted by [the] proposed amendment." The purpose of the December, 1983 Plan amendment was to authorize the Agency's use of condemnation to complete the redevelopment process. Consequently, the only additional finding both required by section 33367 and "warranted" by the proposed amendment was the finding that "the condemnation of real property . . . is necessary to the execution of the redevelopment plan." Health & S.C. § 33367(d)(6). This finding was made. (Pets.' App. VI, B-15). Thus, a renewed finding of blight was not required by state law in this case.

the misconduct or purported promises and assurances on which they allegedly relied,[6] petitioners' own complaint shows at least two disabling infirmities.

First, petitioners' complaint clearly discloses that they have not suffered antitrust injury necessary for standing to bring a claim. It is established beyond dispute that the antitrust laws exist to protect competition, not particular competitors. *Cargill, Inc. v. Monfort of Colorado, Inc.*, ____ U.S. ____, 107 S.Ct. 484, 492, 93 L.Ed.2d 427, 439 (1986); *Brunswick Corp. v. Pueblo Bowl-O Mat, Inc.*, 429 U.S. 477, 488, 97 S.Ct. 690, 697 (1977). Consequently, to amount to an antitrust violation, defendants' conduct must harm competition itself, not merely plaintiff "in its capacity as a competitor." *Aydin Corp. v. Loral Corp.*, 718 F.2d 897, 902 (9th Cir. 1983); *Gough v. Rossmoor*, 585 F.2d 381, 386 (9th Cir.), *cert. denied*, 440 U.S. 936, 99 S.Ct. 1280 (1978). To show injury of the type the antitrust laws were intended to prevent, petitioners must show their injury "was caused by a reduction, rather than an increase, in competition flowing from the defendant's acts." *California Computer Products, Inc. v. International Business Machines Corp.*, 613 F.2d 727, 732 (9th Cir. 1979).

Here the thrust of petitioners' claim is that because of City action they now face *too much* competition. Petitioners admit that without the Koll project their building would command a 50% share of the market for commercial office space in the Pueblo Uno Redevelopment Project. (SAC para. 20). Without Koll, petitioners would be over twice the size of their next largest competitors. (*Id.*) Petitioners are building the largest building in San Jose. (*Id.*, para. 29). Without competition from Koll they could dominate the market. With the Koll building petitioners face much more competition. Adding Koll's 244,000 square feet of competing space (SAC para. 51), petitioners' share of the Pueblo Uno market falls to 35% and it is only 30% larger than its

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[6] Both the state court and the unappealed-from portion of the Ninth Circuit decision affirming dismissal of petitioners' civil rights claims held that the "promises" and "assurances" of parking allegedly relied on are unenforceable as a matter of law. (Pets.' App. III, B-10; 841 F.2d at 893).

nearest competitor—Koll. Thus the City, by inducing Koll to enter the market, has increased competition. This increased competition may mean petitioners' profits will be less handsome than they otherwise would have been, but it surely does not mean that the law intended to preserve competition—the Sherman Act—has been violated.

Another serious flaw in petitioners' case is the inherent contradiction they created in their strained effort to plead around the State Action exemption. The Local Government Antitrust Act of 1984, 15 U.S.C. §§ 34-36, allows only injunctive relief against municipalities. Subsequently, the only remedy petitioners seek is an order forcing the City and Agency to provide allegedly promised parking. But the essential premise of petitioners' misguided attempt to skirt the State Action exemption is (1) that the purpose of the Plan, *ab initio*, was to redevelop the Area through private enterprise acting alone, without public subsidies; and (2) that renewal efforts up through 1982 or 1983 had eliminated blight by private enterprise acting alone without public assistance. These allegations are completely inconsistent with petitioners' allegation that their commercial development was (and remains) unviable without the subsidization—in the form of a grant of public parking—they would have the federal courts require municipal respondents to provide.

These are just two of the inherent flaws in petitioners' case. They provide further reasons why this Court should deny the writ of certiorari.

CONCLUSION

For the reasons stated above, the petition for writ of certiorari should be denied.

DATED: October 26, 1988

Respectfully submitted,

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Appendix

Statutes

California Health and Safety Code:
Section 33035 ..... A-1
Section 33037 ..... A-2
Section 33125 ..... A-2
Section 33131 ..... A-3
Section 33220 ..... A-3
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APPENDIX

Statutes

California Community Redevelopment Act

California Health & Safety Code Sections 33000, et. seq.

Selected Provisions

§ 33035. Public injury from blighted area

It is further found and declared that:

(a) The existence of blighted areas characterized by any or all of such conditions constitutes a serious and growing menace which is condemned as injurious and inimical to the public health, safety, and welfare of the people of the communities in which they exist and of the people of the State.

(b) Such blighted areas present difficulties and handicaps which are beyond remedy and control solely by regulatory processes in the exercise of police power.

(c) They contribute substantially and increasingly to the problems of, and necessitate excessive and disproportionate expenditures for, crime prevention, correction, prosecution, and punishment, the treatment of juvenile delinquency, the preservation of the public health and safety, and the maintaining of adequate police, fire, and accident protection and other public services and facilities.

(d) This menace is becoming increasingly direct and substantial in its significance and effect.

(e) The benefits which will result from the remedying of such conditions and the redevelopment of blighted areas will accrue to all the inhabitants and property owners of the communities in which they exist.

(Added by Stats.1963, c. 1812, p. 3680, § 3.)

§ 33037. Declaration of state policy

For these reasons it is declared to be the policy of the State:

(a) To protect and promote the sound development and redevelopment of blighted areas and the general welfare of the inhabitants of the communities in which they exist by remedying such injurious conditions through the employment of all appropriate means.

(b) That whenever the redevelopment of blighted areas cannot be accomplished by private enterprise alone, without public participation and assistance in the acquisition of land, in planning and in the financing of land assembly, in the work of clearance, and in the making of improvements necessary therefor, it is in the public interest to employ the power of eminent domain to advance or expend public funds for these purposes, and to provide a means by which blighted areas may be redeveloped or rehabilitated.

(c) That the redevelopment of blighted areas and the provisions for appropriate continuing land use and construction policies in them constitute public uses and purposes for which public money may be advanced or expended and private property acquired, and are governmental functions of state concern in the interest of health, safety, and welfare of the people of the State and of the communities in which the areas exist.

(d) That the necessity in the public interest for the provisions of this part is declared to be a matter of legislative determination.

(Added by Stats.1963, c. 1812, p. 3680, § 3.)

§ 33125. Lawsuits; seal; contracts; bylaws and regulations

An agency may:

(a) Sue and be sued.

(b) Have a seal.

(c) Make and execute contracts and other instruments necessary or convenient to the exercise of its powers.

(d) Make, amend, and repeal bylaws and regulations not inconsistent with, and to carry into effect, the powers and purposes of this part.

(Added by Stats.1963, c. 1812, p. 3684, § 3.)

§ 33131. Plans; dissemination of information; applications for federal programs and grants

An agency may:

(a) From time to time prepare and carry out plans for the improvement, rehabilitation, and redevelopment of blighted areas.

(b) Disseminate redevelopment information.

(c) Prepare applications for various federal programs and grants relating to housing and community development and plan and carry out such programs within authority otherwise granted by this part, at the request of the legislative body.

(Added by Stats.1963, c. 1812, p. 3685, § 3. Amended by Stats.1969, c. 1561, p. 3167, § 1.)

§ 33220. Powers of public bodies

For the purpose of aiding and co-operating in the planning, undertaking, construction or operation of redevelopment projects located within the area in which it is authorized to act, any public body, upon the terms and with or without consideration as it determines, may:

(a) Dedicate, sell, convey, or lease any of its property to a redevelopment agency.

(b) Cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works which it is otherwise empowered to undertake, to be furnished adjacent to or in connection with redevelopment projects.

(c) Furnish, dedicate, close, vacate, pave, install, grade, regrade, plan, or replan streets, roads, roadways, alleys, sidewalks, or other places which it is otherwise empowered to undertake.

(d) Plan or replan, zone or rezone any part of such area and make any legal exceptions from building regulations and ordinances.

(e) Enter into agreements with the federal government, an agency, or any other public body respecting action to be taken pursuant to any of the powers granted by this part or any other law; such agreements may extend over any period, notwithstanding any law to the contrary.

§ 33341. Bonds; expenditure of proceeds; repayment

Redevelopment plans may provide for the agency to issue bonds and expend the proceeds from their sale in carrying out the redevelopment plan. If such an issuance is provided for, the redevelopment plan shall also contain adequate provision for the payment of principal and interest when they become due and payable.

(Added by Stats.1963, c. 1812, p. 3691, § 3.)

§ 33342. Acquisition of real property

Redevelopment plans may provide for the agency to acquire by gift, purchase, lease, or condemnation all or part of the real property in the project area.

(Added by Stats.1963, c. 1812, p. 3691, § 3.)

§ 33367. Contents of ordinance adopting plan*

The ordinance shall contain:

(a) The purposes and intent of the legislative body with respect to the project area.

(b) The plan incorporated by reference.

(c) A designation of the approved plan as the official redevelopment plan of the project area.

(d) The findings and determinations of the legislative body that:

(1) The project area is a blighted area, the redevelopment of which is necessary to effectuate the public purposes declared in this part.

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* As statute read in 1983.

(2) The redevelopment plan would redevelop the area in conformity with this part and in the interests of the public peace, health, safety, and welfare.

(3) The adoption and carrying out of the redevelopment plan is economically sound and feasible.

(4) The redevelopment plan conforms to the general plan of the community.

(5) The carrying out of the redevelopment plan would promote the public peace, health, safety, and welfare of the community and would effectuate the purposes and policy of this part.

(6) The condemnation of real property, if provided for in the redevelopment plan, is necessary to the execution of the redevelopment plan and adequate provisions have been made for payment for property to be acquired as provided by law.

(7) The agency has a feasible method or plan for the relocation of families and persons displaced from the project area, if the redevelopment plan may result in the temporary or permanent displacement of any occupants of housing facilities in the project area.

(8) There are or are being provided in the project area or in other areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and persons displaced from the project area, decent, safe, and sanitary dwellings equal in number to the number of and available to such displaced families and persons and reasonably accessible to their places of employment.

(9) All noncontiguous areas of a project area are either blighted or necessary for effective redevelopment and are not included for the purpose of obtaining the allocation of taxes from such area pursuant to Section 33670 without other substantial justification for their inclusion.

(10) Inclusion of any lands, buildings, or improvements which are not detrimental to the public health, safety, or welfare is necessary for the effective redevelopment of the area of which they are a part; that any such area included is necessary for

effective redevelopment and is not included for the purpose of obtaining the allocation of tax increment revenues from such area pursuant to Section 33670 without other substantial justification for its inclusion.

(11) The elimination of blight and the redevelopment of the project area could not be reasonably expected to be accomplished by private enterprise acting alone without the aid and assistance of the agency.

(e) A statement that the legislative body is satisfied permanent housing facilities will be available within three years from the time occupants of the project area are displaced and that pending the development of such facilities there will be available to such displaced occupants adequate temporary housing facilities at rents comparable to those in the community at the time of their displacement.

(f) When the project is financed in part or in whole from revenues derived from the allocation of taxes pursuant to Section 33670, a statement that the legislative body is convinced that the effect of tax increment financing will not cause a severe financial burden or detriment on any taxing agency deriving revenues from a tax increment project area.

(Amended by Stats.1976, c. 1336, p. 5056, § 9.)

§ 33368. Finality of decision; conclusive presumptions; applicability of section

The decision of the legislative body shall be final and conclusive, and it shall thereafter be conclusively presumed that the project area is a blighted area as defined by Sections 33031 or 33032 and that all prior proceedings have been duly and regularly taken.

This section shall not apply in any action questioning the validity of any redevelopment plan, or the adoption or approval of such plan, or any of the findings or determinations of the agency or the legislative body in connection with such plan brought pursuant to Section 33501 within the time limits prescribed by Section 33500.

§ 33396. Acceptance of surplus real property; disposition; funds

An agency at the request of the legislative body of the community may accept a conveyance of real property (located either within or outside a survey area) owned by a public entity and declared surplus by the public entity, or owned by a private entity.

The agency may dispose of such property to private persons or to public or private entities, by sale or long-term lease for development. All or any part of the funds derived from the sale or lease of such property may at the discretion of the legislative body of the community be paid to the community, or to the public entity from which any such property was acquired.

(Added by Stats.1965, c. 1553, p. 3625, § 1. Amended by Stats.1969, c. 1561, p. 3168, § 4.)

Article 12

AMENDMENT OF REDEVELOPMENT PLANS

Sec.

33450. Authority to amend; recommendation.
33451. Hearing by agency on proposed amendment.
33452. Notice of hearing; publication; contents; mailing.
33453. Submission of recommended changes to planning commission; waiver.
33454. Hearing by legislative body on proposed changes.
33455. Recommended changes; submission to planning commission; report; waiver; amending ordinance.
33456. Recordation.
33457. Transmittal of copy of ordinance to tax officials.
33457.1. Findings; availability of reports and information.
33458. Joint public hearing on proposed amendment; notice; procedure.

Article 12 was added by Stats.1963, c. 1812, p. 3701, § 3.

§ 33450. Authority to amend; recommendation

If at any time after the adoption of a redevelopment plan for a project area by the legislative body, it becomes necessary or desirable to amend or modify such plan, the legislative body may by ordinance amend such plan upon the recommendation of the agency. The agency recommendation to amend or modify a redevelopment plan may include a change in the boundaries of the project area to add land to or exclude land from the project area. Except as otherwise provided in Section 33378, the ordinance shall be subject to referendum as prescribed by law for the ordinances of the legislative body.

(Amended by Stats.1977, c. 797, p. 2446, § 11.)

§ 33451. Hearing by agency on proposed amendment

Before recommending amendment of the plan the agency shall hold a public hearing on the proposed amendment.

(Added by Stats.1963, c. 1812, p. 3701, § 3.)

§ 33452. Notice of hearing; publication; contents; mailing

Notice of such hearing shall be published pursuant to Section 6063 of the Government Code prior to the date of hearing in a newspaper of general circulation, printed and published in the community, or, if there is none, in a newspaper selected by the agency. The notice of hearing shall include a legal description of the boundaries of the project area by reference to the description recorded with the county recorder pursuant to Section 33373 and of the boundaries of the land proposed to be added to the project area, if any, and a general statement of the purpose of the amendment. Copies of the notices shall be mailed to the last known assessee of each parcel of land not owned by the agency within such boundaries, at his last known address as shown on the last equalized assessment roll of the county; or where a city assesses, levies, and collects its own taxes, as shown on the last equalized assessment roll of the city; or to the owner of each parcel of land within such boundaries as such ownership is shown on the records of the county recorder 30 days prior to the date the notice is published, and to persons, firms, or corporations which have acquired property within such boundaries from the agency,

at his last known address as shown by the records of the agency. Copies of the notices shall also be mailed to the governing body of each of the taxing agencies which levies taxes upon any property in the project area designated in the redevelopment plan as proposed to be amended. The notice shall be mailed by certified mail with return receipt requested.

§ 33453. Submission of recommended changes to planning commission; waiver

If after the public hearings the agency recommends substantial changes in the plan which affect the general plan adopted by the planning commission or the legislative body, such changes shall be submitted to the planning commission for its report and recommendation to the legislative body within 30 days after such submission. If the planning commission does not report upon the changes within 30 days after its submission by the agency, the planning commission shall be deemed to have waived its report and recommendations concerning such changes.

§ 33454. Hearing by legislative body on proposed changes

After receiving the recommendation of the agency concerning such changes in the plan, and not sooner than 30 days after the submission of changes to the planning commission, the legislative body shall hold a public hearing on the proposed amendment, notice of which hearing shall be published in a newspaper in the manner and at the times designated above for notice of hearing by the agency.

(Added by Stats.1963, c. 1812, p. 3701, § 3.)

§ 33455. Recommended changes; submission to planning commission; report; waiver; amending ordinance

After receiving the recommendation of the agency concerning such changes in the plan, the legislative body upon further recommendation by the agency, without additional agency public hearing, may make further changes, including changes in area or boundaries to exclude land from the project area, for consideration at the public hearing. If such changes are substantial changes in the plan which affect the master or community plan adopted by the planning commission or the legislative body, such changes shall be submitted to the planning commission for its report and recommendation to the legislative body within 30 days after such submission. If the planning commission does not report upon the changes within 30 days after its submission by the legislative body, the planning commission shall be deemed to have waived its report and recommendation concerning the changes. If after the public hearing the legislative body determines that the amendments in the plan, proposed by the agency, or the further recommended changes by the agency are necessary or desirable, the legislative body shall adopt an ordinance amending the ordinance adopting the plans thus amended. The legislative body shall consider any proposed changes at a public hearing reopened for that limited purpose.

(Added by Stats.1963, c. 1812, p. 3701, § 3. Amended by Stats.1965, c. 1665, p. 3787, § 39; Stats.1967, c. 1242, p. 3017, § 9.5.)

§ 33456. Recordation

Amendments to a plan adopted pursuant to this article may be recorded in compliance with Section 27295 of the Government Code as promptly as practicable following adoption by the legislative body.

(Added by Stats.1963, c. 1812, p. 3701, § 3. Amended by Stats.1967, c. 1242, p. 3018, § 10.)

§ 33457. Transmittal of copy of ordinance to tax officials

After the amendment of a redevelopment plan to add the provision permitted by Section 33670, or to increase or reduce the

size of the project area, the clerk of the community shall transmit a copy of the ordinance amending the plan, a description of the annexed or detached land within the project area and a map or plat indicating the amendments to the redevelopment plan, to the following parties:

(1) The auditor and assessor of the county in which the project is located;

(2) The officer or officers performing the functions of the auditor or assessor for any taxing agencies which, in levying or collecting taxes, do not use the county assessment roll or do not collect taxes through the county;

(3) The governing body of each of the taxing agencies which levies taxes upon any property in the project area; and

(4) The State Board of Equalization.

Such documents shall be transmitted within 30 days following the adoption of the amended redevelopment plan. The legal effect of such transmittal shall be as set forth in Section 33674.

(Amended by Stats.1978, c. 1112, p. 3387, § 3.)

§ 33457.1. Findings; availability of reports and information

To the extent warranted by a proposed amendment to a redevelopment plan, (1) the ordinance adopting an amendment to a redevelopment plan shall contain the findings required by Section 33367 and (2) the reports and information required by Section 33352 shall be prepared and made available to the public prior to the hearing on such amendment.

(Added by Stats.1977, c. 797, p. 2446, § 12.]

§ 33458. Joint public hearing on proposed amendment; notice; procedure

As an alternative to the separate public hearing required by Sections 33451 and 33454, the agency and the legislative body, with the consent of both, may hold a joint public hearing on the proposed amendment. The presiding officer of the legislative body shall preside over such joint public hearing. Prior to such joint public hearing, the agency shall submit the proposed changes to the planning commission as provided in Section 33453. Notice of

the joint public hearing shall conform to all requirements of Section 33452. The joint public hearing shall thereafter proceed by the same requirements as are provided in Sections 33450 and 33454 to 33455, inclusive.

When a joint public hearing is held where the legislative body is also the agency, the legislative body may adopt the amended plan with no actions necessary by the agency, even as to the recommendations required of the agency by Sections 33454 and 33455.

(Added by Stats.1967, c. 1242, p. 3018, § 11.5.)

Chapter 5

LEGAL ACTIONS

§ 33500. Limitation of actions

No action attacking or otherwise questioning the validity of any redevelopment plan, or amendment to a redevelopment plan, or the adoption or approval of such plan, or amendment, or any of the findings or determinations of the agency or the legislative body in connection with such plan shall be brought prior to the adoption of the redevelopment plan nor at any time after the elapse of 60 days from and after the date of adoption of the ordinance adopting or amending the plan.

The amendments made to this section at the 1977-78 Regular Session of the Legislature do not represent a change in, but are declaratory of, exisiting law.

(Amended by Stats.1977, c. 797, p. 2446, § 13.)

§ 33501. Purpose of proceeding; law governing

An action may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure to determine the validity of bonds and the redevelopment plan to be financed or refinanced, in whole or in part, by the bonds, or to determine the validity of a redevelopment plan not financed by bonds, including without limiting the generality of the foregoing, the legality and validity of all proceedings theretofore taken for or in any way connected with the establishment of the agency, its authority to transact business and exercise its powers, the designation of the survey area, the selection of the project area, the formulation of the preliminary plan, and the adoption of the redevelopment or renewal plan, and also including the legality and validity of all proceedings theretofore taken and (as provided in the bond resolution) proposed to be taken for the authorization, issuance, sale and delivery of the bonds and for the payment of the principal thereof and interest thereon.

(Added by Stats.1963, c. 1812, p. 3702, § 3. Amended by Stats.1965, c. 1665, p. 3788, § 40.)